

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 390

AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-5-15-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) **Except as provided in subsection (d), a contract between a consumer and a credit services organization concerning the purchase of the services of the credit services organization must be in writing, be dated and signed by both the consumer and the credit services organization, and include all of the following:**

(1) A statement in at least 10 point boldface type in immediate proximity to the space reserved for the signature of the buyer that reads:

"You, the buyer, may cancel this contract at any time before midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The terms and conditions of payment, including the total amount of all payments to be made by the buyer to the credit services organization or to another person.

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services organization for or on behalf of the buyer, including all

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guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services organization expects to have modified and the estimated date by which each modification will occur.

(4) The principal business address of the credit services organization and the name and address of the credit services organization's agent in Indiana authorized to receive service of process.

(b) A contract shall be accompanied by two (2) copies of a form captioned "NOTICE OF CANCELLATION" attached to the contract and that contains the following statement in at least 10 point boldface type:

NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time before midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice, or any other written notice, to

(name of seller)

(address of seller) _____ (place of business) _____

not later than midnight _____

(date)

"I hereby cancel this transaction". _____

(date)

(buyer's signature)

(c) A credit services organization shall give a copy of the completed contract and all other documents required by the credit services organization to the buyer at the time the contract and the documents are signed.

(d) If a contract is subject to this chapter and to IC 24-5.5, IC 24-5.5-4 applies to the contract.

SECTION 2. IC 24-5.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**ARTICLE 5.5. MORTGAGE RESCUE PROTECTION FRAUD
Chapter 1. Application**

Sec. 1. This article does not apply to the following:

(1) A person organized or chartered under the laws of this

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state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.

(2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.

(3) A department or agency of the United States or of Indiana.

(4) A person that is servicing or enforcing a loan that it owns.

(5) A person that is servicing a loan:

(A) for a person described in subdivisions (1) through (4) of this section; or

(B) insured by the Department of Housing and Urban Development or guaranteed by the Veterans Administration.

(6) An attorney licensed to practice law in Indiana who is representing a mortgagor.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Foreclosure consultant" means a person who, directly or indirectly, makes a solicitation, a representation, or an offer to a homeowner to perform, with or without compensation, any service that the person represents will:

(1) prevent or postpone the initiation of a foreclosure proceeding, or reverse the effect of a foreclosure proceeding;

(2) allow the homeowner to become a lessee or renter in the homeowner's residence during or after a foreclosure proceeding; or

(3) allow the homeowner to have an option to repurchase the homeowner's residence after a foreclosure proceeding.

Sec. 3. "Foreclosure purchaser" means a person who purchases real property in a foreclosure proceeding.

Sec. 4. "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of interest in real property by a homeowner to a person during or incident to a proposed foreclosure proceeding, either by:

(A) transfer of interest from the homeowner to the person; or

(B) creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process;

that allows the person to obtain legal or equitable title to all

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or part of the real property; and

(2) the subsequent conveyance, or promise of subsequent conveyance, of interest back to the homeowner by the person or the person's agent that allows the homeowner to possess the real property following the completion of the foreclosure proceeding.

Sec. 5. "Formal settlement" means a face-to-face meeting with a homeowner to complete final documents incident to the:

- (1) sale or transfer of real property; or
- (2) creation of a mortgage or equitable interest in real property;

conducted by a person who is not employed by or an affiliate of the foreclosure purchaser.

Sec. 6. "Homeowner" means a person who holds record title to residential real property as of the date on which:

- (1) a contract with a foreclosure consultant; or
- (2) a foreclosure reconveyance agreement;

with respect to the residential real property is entered into.

Chapter 3. Notice of Foreclosure

Sec. 1. In addition to any other notice required by law, a mortgagee, or the mortgagee's assignee, that proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust shall, at the time of filing the complaint in the action, provide the following written notice to the mortgagor in a statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana housing and community development authority."

Service of the written notice required by this chapter shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person.

Chapter 4. Rescission of Contracts With Foreclosure Consultants and Foreclosure Reconveyance Agreements

Sec. 1. In addition to any other right under law to cancel or rescind a contract, a homeowner may rescind a:

- (1) contract with a foreclosure consultant at any time before

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midnight of the seventh business day after the date the contract is signed; and

(2) foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement, as described in IC 24-5.5-2-4(1).

Sec. 2. A homeowner effectively rescinds a contract with a foreclosure consultant if the homeowner gives written notice of a rescission to the foreclosure consultant by one (1) of the following:

(1) Mailing the rescission to the address specified in the contract.

(2) Sending the rescission through any facsimile or electronic mail address identified in the contract or other material provided to the homeowner by the foreclosure consultant.

Sec. 3. (a) If a notice of rescission under this chapter is sent by mail, the rescission is effective three (3) days after the notice is deposited in the U.S. mail, properly addressed, with postage prepaid.

(b) A homeowner is not required to give notice of rescission in the form required under the contract if the form under the contract is inconsistent with the requirements under this chapter.

Sec. 4. (a) If a homeowner rescinds a contract with a foreclosure consultant or a foreclosure reconveyance agreement, the homeowner shall, not later than thirty (30) days after the date of rescission, repay any amounts paid or advanced by:

(1) the foreclosure consultant or the foreclosure consultant's agent under the terms of the foreclosure consulting contract; or

(2) a person under a foreclosure reconveyance agreement.

(b) A rescission by a homeowner under this chapter is void if the payments required under this section are not made within the time set forth in subsection (a).

Sec. 5. If a homeowner rescinds a contract with a foreclosure consultant, not less than ten (10) days following the effective date of the rescission, the consultant shall return to the homeowner any payments made by the homeowner, less any amounts for actual services rendered.

Chapter 5. Limitations on Foreclosure Consultants and Foreclosure Reconveyances

Sec. 1. For purposes of this chapter, there is a rebuttable presumption that:

(1) a homeowner has a reasonable ability to pay for a

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subsequent reconveyance of real property if the homeowner's payments for primary housing expenses and regular principal and interest payments on other personal debt, on a monthly basis, do not exceed sixty percent (60%) of the homeowner's monthly gross income; and

(2) the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the homeowner of assets, liability, and income.

Sec. 2. In addition to any prohibitions that apply under IC 24-5-15-1 through IC 24-5-15-8, a foreclosure consultant may not:

(1) enter into or attempt to enter into a foreclosure consultant contract with a homeowner unless the foreclosure consultant first provides the homeowner written notice of the homeowner's rights under this article;

(2) demand or receive compensation until after the foreclosure consultant has fully performed all services the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform, unless the foreclosure consultant complies with the security requirements under IC 24-5-15-8;

(3) demand or receive a fee, interest, or any other compensation that exceeds eight percent (8%) per year of the amount of any loan that the foreclosure consultant makes to the homeowner;

(4) take a wage assignment, a lien of any type on real or personal property, or any other security to secure the payment of compensation;

(5) receive consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed in writing to the homeowner;

(6) acquire any interest, directly or indirectly, in residential real property in foreclosure from a homeowner with whom the foreclosure consultant has contracted; or

(7) except to inspect documents as provided by law, take any power of attorney from a homeowner for any purpose.

Sec. 3. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance agreement with a homeowner unless the:

(1) foreclosure purchaser verifies and demonstrates that the

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homeowner has or will have a reasonable ability to:

- (A) pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the foreclosure conveyance; or
- (B) if the foreclosure conveyance provides for a lease with an option to repurchase the real property, make the lease payment and repurchase the real property within the period of the option to repurchase;
- (2) foreclosure purchaser provides the homeowner written notice of the homeowner's rights under this article;
- (3) foreclosure purchaser and the homeowner complete a formal settlement before any transfer of interest in the affected property; and
- (4) foreclosure purchaser complies with the security requirements under IC 24-5-15-8.

Sec. 4. A foreclosure purchaser shall:

- (1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if the terms of a foreclosure reconveyance agreement require a reconveyance; or
- (2) if the real property subject to a foreclosure reconveyance agreement is sold within eighteen (18) months after entering into the foreclosure reconveyance agreement, make payment to the homeowner not later than ninety (90) days after the resale of the real property in an amount equal to at least sixty-six percent (66%) of the net proceeds from the resale of the property.

Sec. 5. A foreclosure purchaser may not:

- (1) enter into repurchase or lease terms as part of the foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct;
- (2) represent, directly or indirectly, that the:
 - (A) foreclosure purchaser is acting:
 - (i) as an adviser or a consultant; or
 - (ii) in any other manner on behalf of the homeowner;
 - (B) foreclosure purchaser is assisting the homeowner to save the residence; or
 - (C) foreclosure purchaser is assisting the homeowner in preventing a foreclosure if the result of the transaction is that the homeowner will not complete a redemption of the property; or
- (3) until the homeowner's right to rescind or cancel the

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foreclosure reconveyance agreement has expired:

- (A) record any document, including an instrument or conveyance, signed by the homeowner; or
- (B) transfer to a third party or encumber, or purport to transfer to a third party or encumber, any interest in the residential real property in foreclosure.

Sec. 6. A foreclosure purchaser shall make a detailed accounting of the basis for the amount of payment made to a homeowner of real property resold within eighteen (18) months after entering into a foreclosure reconveyance agreement on a form prescribed by the attorney general.

Chapter 6. Enforcement

Sec. 1. A person who violates this article commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the penalties and remedies available to the attorney general under IC 24-5-0.5.

Sec. 2. (a) A homeowner may bring an action against a person for damages incurred as a result of a violation of this article.

(b) A homeowner who:

- (1) brings an action under this section; and
- (2) is awarded damages;

may seek reasonable attorney's fees.

Sec. 3. (a) A court may award attorney's fees under section 2(b) of this chapter.

(b) If the court finds that a person willfully or knowingly violated this article, the court may award damages equal to three (3) times the amount of actual damages.

Sec. 4. (a) The Indiana housing and community development authority shall maintain a list of nonprofit organizations that:

- (1) offer counseling or advice to homeowners in foreclosure or loan defaults; and
- (2) do not contract for services with for-profit lenders or foreclosure purchasers.

(b) The Indiana housing and community development authority shall provide names and telephone numbers of the organizations described in subsection (a) to a homeowner upon request.

Sec. 5. The attorney general may adopt rules under IC 4-22-2 necessary to implement this article.

Sec. 6. Except as provided in IC 24-5-15-7(d), this article may not be construed to preempt the provisions of IC 24-5-15-1 through IC 24-5-15-11.

SECTION 3. IC 25-1-11-13 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. **(a)** The board may summarily suspend a practitioner's license for ninety (90) days before a final adjudication or during the appeals process if the board finds that a practitioner represents a clear and immediate danger to the public's health, safety, or property if the practitioner is allowed to continue to practice. The summary suspension may be renewed upon a hearing before the board, and each renewal may be for not more than ninety (90) days.

(b) The board may summarily suspend the license of a real estate appraiser for ninety (90) days before a final adjudication or during the appeals process if the board finds that the licensed real estate license appraiser has engaged in material and intentional misrepresentations or omissions in the preparation of three (3) or more written appraisal reports that were submitted by a person to obtain a loan. The summary suspension may be renewed after a hearing before the board. Each renewal may be for not more than ninety (90) days.

(c) Before the board may summarily suspend a license under this section, the consumer protection division of the office of the attorney general must make a reasonable attempt to notify a practitioner of:

- (1)** a hearing by the board to suspend a practitioner's license; and
- (2)** information regarding the allegation against the practitioner.

The consumer protection division of the office of the attorney general must also notify the practitioner that the practitioner may provide a written or an oral statement to the board on the practitioner's behalf before the board issues an order for summary suspension. A reasonable attempt to reach the practitioner is made if the consumer protection division of the office of the attorney general attempts to reach the practitioner by telephone or facsimile at the last telephone number of the practitioner on file with the board.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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